

STATE CORPORATION COMMISSION

96123 0002

AT RICHMOND, DECEMBER 11, 1996

PETITION OF

AT&T COMMUNICATIONS OF VIRGINIA, INC.

For arbitration of unresolved
issues from the interconnection
negotiations with GTE South, Inc.
pursuant to § 252 of the
Telecommunications Act of 1996

CASE NO. PUC960117

DEC 11 PM 7:36

DOCUMENT CONTROL

PETITION OF

COX FIBERNET COMMERCIAL SERVICES, INC.

For arbitration of unresolved
issues from the interconnection
negotiations with GTE South, Inc.
pursuant to § 252 of the
Telecommunications Act of 1996

CASE NO. PUC960118

PETITION OF

MCI TELECOMMUNICATIONS CORPORATION
and
MCImetro ACCESS TRANSMISSION
SERVICES OF VIRGINIA, INC.

For arbitration of unresolved
issues from the interconnection
negotiations with GTE South, Inc.
pursuant to § 252 of the
Telecommunications Act of 1996

CASE NO. PUC960124

PETITION OF

SPRINT COMMUNICATIONS COMPANY, L.P.

For arbitration of unresolved
issues from the interconnection
negotiations with GTE South, Inc.
pursuant to § 252 of the
Telecommunications Act of 1996

CASE NO. PUC960131

ORDER RESOLVING RATES FOR UNBUNDLED NETWORK ELEMENTS
AND INTERCONNECTION, WHOLESALE DISCOUNT FOR
SERVICES AVAILABLE FOR RESALE, AND OTHER MATTERS

Introduction

By order dated October 11, 1996, the Commission consolidated the above-referenced arbitration cases for hearing purposes in accordance with section 252(g) of the Telecommunications Act of 1996 ("the Act"). The October 11 order was issued in response to the Federal Communications Commission ("FCC") findings In the Matter of Implementation of the Local Competition Provisions in the Telecommunication Act of 1996 (First Report and Order, CC Docket No. 96-98, released August 8, 1996) ("FCC Order"). The FCC Order established default proxy prices and ranges that a state commission could utilize if the cost information available to it within the arbitration time frame was insufficient for the state commission to set permanent rates. The October 11 order stated that the Commission would receive evidence on GTE South, Inc.'s ("GTE") cost studies and the default proxies, and it provided a date for the parties to file additional testimony on those topics. The Commission also required its Staff to file a report on the unresolved issues between the parties consistent with Rule 4:9 of the Commission Rules of Practice and Procedure

and the Commission's Procedural Rules for Implementing §§ 251 and 252 of the Act adopted in Case No. PUC960059.

On October 15, 1996, the Court of Appeals for the Eighth Circuit made permanent a stay of the pricing provisions and the "pick and choose" provision of the FCC order.

On October 23, 1996, the Commission entered an Interim Order reflecting the changes in the consolidated hearing process necessitated by the Eighth Circuit stay. The Commission allowed the parties additional time to file testimony and evidence on GTE's cost studies and the proxies, and the Commission extended the time for the Staff to file a report on the wholesale discount for services available for resale and prices for unbundled network elements and interconnection. The Commission received evidence from the parties and the Staff on the pricing and resale issues during hearings held November 19-22, and November 25-26, 1996.

Wholesale Discount for Services Available for Resale

GTE's primary avoided cost study was based on nation-wide data. The Commission should not determine a Virginia wholesale discount without data that is Virginia specific or at least tailored for Virginia. Due to GTE's inability to furnish Virginia data, we have concluded that our wholesale discount

shall be in effect until we can establish the discounts based upon Virginia data, to the extent practicable, in a manner satisfactory to the Commission; we expect that this process will take approximately one year from the date of this order. Until we can establish the discounts, and except as modified in this order, we will use the Staff's methodology of determining proportions of costs excludable and avoidable taken from the workcenter analysis contained at pages 15-18 of Ex. Staff-P-49. As modified herein, those proportions of avoidable costs will be applied to GTE ARMIS total company 1995 accounting data for the Contel service territory.

The language of the Act, § 252(d)(3) referring to ". . . costs that will be avoided . . ." is interpreted as those costs that would be reasonably avoidable by a local exchange company furnishing only wholesale service. We calculate only two discounts, one with GTE furnishing all services and another for GTE furnishing all services except directory assistance and call completion.

There should be few restrictions on services available for resale. We agree with the Staff that only Part 64 services, access services, the customer premises portion of public telephone service, billing and collection services, vertical

white pages directory services, and yellow pages advertising should be excluded from resale. Further restrictions pursuant to 47 C.F.R. § 51.613 are cross-class selling and promotions of 90 days or less. Grandfathered services should not be resold except to the same limited group that had purchased them in the past, consistent with 47 C.F.R. § 51.615. It is also reasonable and non-discriminatory to restrict resale of means-based services such as the Virginia Universal Service Plan, as GTE proposes. No other restrictions are permissible. Section 251(c)(4)(A) requires GTE to offer ". . . for resale at wholesale rates any telecommunications service" We find no restriction allowable for any residential or other GTE retail service that GTE claims to be priced below costs.

We agree that a local exchange company furnishing only wholesale service would incur some new costs in acting as a wholesaler. While we question that costs related to special access are an accurate representation of such new costs, we will allow 53¢ per month, as urged by GTE, per average 1995 network access line, as an avoidable cost offset of \$2,849,000. We do so because we find that some amount should be included and this is the only amount presented. This and other aspects of the discount need to be more fully examined in a proceeding which the

Commission will establish in the near future. We find no statutory or other basis for including "opportunity costs" for revenues that GTE may forego when it is acting as a wholesaler.

We adopt the "Avoidable Costs" shown in column H of Attachments 2 and 2A of Ex. Staff-P-49, except for the direct and indirect accounts discussed below. For Account No. 6611 (Product Management), we agree with AT&T Communications of Virginia, Inc. ("AT&T") that \$1,184,000 is avoidable. For Account No. 6613 (Product Advertising), we agree with GTE that \$1,737,000 is avoidable. Based on the evidence, we determine that 80% of Account No. 6623 (Customer Services), less non-regulated expenses, is avoidable. Therefore, the account has \$15,491,000 of avoidable expenses.

We agree with AT&T's methodology of determining the indirect allocations, i.e. directly avoided expenses divided by total direct expenses including depreciation, but less non-regulated expenses and Staff exclusions for Accounts 6110, 6220, 6510, 6612, 6621, and 6622. This results in indirect factors of 15.97% and 14.90%, when GTE does not provide operator services and when GTE does provide operator services, respectively, for determining avoidable indirect expenses. We have applied these factors to Accounts 6120, 6710, and 6720, less non-regulated expenses to

determine avoidable indirect expenses. We agree with AT&T that 20% of Account No. 6533 (Testing Expense) and No. 6534 (Plant Operations Administration Expense) are avoidable; that is, \$859,000 and \$1,237,000, respectively. We also agree with Staff that no depreciation and no return on rate base is avoidable.

As a result of treating all the accounts as indicated above, we calculate the wholesale discount by placing total avoidable costs in the numerator and dividing by a denominator consisting of the revenue corresponding to the services represented by the numerator; that is, the revenues shown in Attachment 1 of Ex. Staff-P-49. For the Contel service territory of GTE, that calculation produces a discount of 20.6% when GTE provides directory assistance and call completion services and 23.4% when GTE does not furnish those services.

Pricing of Unbundled Elements and Interconnection

The Commission was presented with two cost models, the GTE model and the Hatfield model, for the purposes of establishing unbundled network element pricing and rates for interconnection. GTE argued that its model represented GTE's forward-looking costs, or Total Element Long Run Incremental Costs ("TELRIC"). The costs derived from GTE's TELRIC model were utilized as a starting point with GTE's proposed prices being determined

utilizing a Market-determined Efficient Component Pricing Rule ("M-ECPR") methodology. GTE recommends that its rates be adopted as permanent rates, or interim rates subject to a true-up. GTE further claims that adoption of the FCC proxy rates, adoption of any interim rates other than its own, without a true-up, or adoption of any rates other than its own as permanent rates would result in an unconstitutional taking of its property.

The Hatfield model, jointly sponsored by AT&T and MCI Telecommunications Corporation of Virginia, Inc. and MCI Metro Access Transmission Services of Virginia, Inc. (collectively "MCI"), was also presented as a TELRIC model representing GTE's forward-looking costs. The Hatfield model was used to establish AT&T/MCI proposed prices for many network elements and interconnection. The Staff's proposal was also based on the Hatfield model; however, the Staff ran the model to modify it and test for sensitivity to a number of weaknesses in the model inputs that the Staff observed.

The GTE model was subject to many criticisms by the parties and the Commission Staff. The model was deemed a "black box," in that, despite requests for access, the model was not made available to the parties or the Commission Staff to determine the reasonableness or validity of its assumptions and inputs, or to

run it with revised input data or assumptions. This meant that the model's operation and assumptions could not be tested or effectively challenged by others. In addition, the parties argued, despite GTE's claims to the contrary, that the model actually contained considerable data that was not specific to GTE's operations in Virginia. Evidence showed that the drop lengths utilized in the GTE model were based on a Texas sample study, not a Virginia sample study. The fill factors utilized were assumed constant rather than being Virginia-specific actuals or based on an empirical study. The parties also asserted that the mix of cable was not based on the Virginia mix in the network, and that the selection of the wire center sample was flawed. The parties also asserted that the computation of material and labor investment was undocumented and the switch costs were unverifiable.

On the other hand, GTE and the Staff criticized the Hatfield model. GTE argued that the Hatfield model did not accurately represent GTE's actual drop lengths or fill factors. In GTE's view, Hatfield also assumed an improperly low cost of capital and a depreciation schedule with economic lives that were too long. GTE further asserted that Hatfield used national default values for inputs, rather than Virginia specific information. Finally,

GTE criticized Hatfield for understating GTE's joint and common costs. No party, however, claimed that access to the Hatfield model was denied.

The Commission finds merit in the criticisms of the models. We find that the evidence presented by the parties was not adequate to allow us to choose either the GTE or the AT&T/MCI Hatfield model results for determining costs to be used for setting permanent rates. Neither will the Commission impose the FCC default proxies in this case. Therefore, the Commission adopts the Staff's proposal for rates for unbundled elements and interconnection as set out in Attachment A. While the Staff utilized the Hatfield model to determine rates, certain inputs were adjusted to reflect specific concerns identified by GTE to the Staff. Based on the limited record in this proceeding, the Staff's approach is the only reasonable option presented for unbundled network elements and interconnection rates.

Despite our concerns with the models presented by the parties, the Commission must resolve the unresolved issues of unbundled network element and interconnection prices by the nine-month statutory deadline set forth in § 252(b)(4)(C) of the Act. We find it contrary to the intent of the Act and the overall public interest to set permanent prices based on the record

before us. In this proceeding, we have completed the most thorough analysis we could in the limited time available under the Act. Moreover, the models presented each have flaws, and there was limited time and opportunity for analysis and possible modification of the models by the parties, the Staff, and the Commission. However, since the Act requires that we resolve the unresolved issues by the statutory deadline, the rates set forth in this proceeding will be effective from the date of this order and will be replaced by rates set in the pricing proceeding that we will initiate shortly. We expect the rates will be replaced by permanent rates in approximately one year. This pricing proceeding will give the Commission adequate time to evaluate any cost models and/or other proposals submitted. Therefore, it is necessary for any cost models submitted in that proceeding to be readily available to the parties to operate and include Virginia-specific data to the extent practicable and appropriate. Although, in the current proceeding, the Staff's proposed rates are based on outputs of the Hatfield model, the Commission's decision herein is not an approval of the Hatfield model for purposes of determining permanent rates. The record before us is simply not adequate to allow us to do so.

The Commission finds that pricing according to the M-ECPR is not consistent with the Act. Section 252(d)(1) of the Act provides for rates for network elements and interconnection based on costs, which may include a reasonable profit. Prices set at a market-determined level as envisioned by the M-ECPR method could actually result in over or underrecovery of costs because the market-based price could be above or below GTE's cost. However, the Commission's rejection of the M-ECPR methodology should not be construed to mean that the Commission rejects the right of an incumbent local exchange carrier ("ILEC") to recover an appropriate share of joint and common costs or a reasonable profit in its prices under § 252(d) of the Act.

The Commission also denies GTE's request for an end user surcharge. GTE did not present evidence of the amount of any potential end user surcharge, nor did it prove the need or propriety in this proceeding for the imposition of such a surcharge.

The Commission does find some merit in GTE's concern regarding potential loss of contribution from the subsidies inherent in the rates for access and intraLATA toll services. GTE's claim is that through the provision of unbundled elements, the contributions from other services such as access charges and

intraLATA toll services will be eliminated. The Commission believes that the risk of any significant revenue loss is minimal and will be further minimized through either FCC or state proceedings on Universal Service and access reform. However, the Commission will adopt GTE's proposal regarding the application of certain switched access charge elements to carriers that purchase an unbundled local switching element from GTE during the period when the rates established in this order are in effect. This finding may be modified through any decisions in the Universal Service or access reform proceedings at either the state or federal level. Allowing GTE to assess switched access charges in these circumstances would continue revenue contributions from access and intraLATA toll services to be retained by GTE during the period when rates set by this order are in effect. This decision should address GTE's claim that it may underrecover its costs.

OTHER MATTERS

GTE asserted that a wholesale discount or rates for unbundled network elements or interconnection other than its own would result in an unconstitutional taking of its property. The Commission has established a wholesale discount and prices for unbundled network elements and interconnection in accordance with

§ 252(d) of the Act, thereby fulfilling our duties under the Act. We find no evidence in the record to indicate that our order will result in an unconstitutional taking of property. GTE's concern that its rates and revenues subject to our jurisdiction may become insufficient to cover its costs may be adequately addressed, if necessary, in other proceedings under its Alternative Regulatory Plan and as permitted by the Code of Virginia. GTE has a proceeding under its Alternative Regulatory Plan, Case No. PUC950019, currently pending before the Commission.

The Commission rejects GTE's request for restrictions on the recombination of unbundled elements. GTE is required to provide any Commission-approved unbundled network element in any technically feasible manner for the provision of telecommunications service in accordance with § 251(c)(3) of the Act. The petitioners may combine such unbundled network elements to provide telecommunications services.

The Commission adopts a bill-and-keep methodology for mutual traffic termination as agreed upon by all parties in this proceeding. A traffic imbalance threshold of plus or minus ten percent shall be used. The Commission determines that the rates

for traffic imbalance to be utilized are those recommended by the Staff as identified in Attachment A.

The Commission has been requested to arbitrate rates for poles, ducts, conduit, and rights-of-way. On December 2, 1996 Cox Fibernet Commercial Services, Inc. ("Cox") filed a joint motion with the Virginia Cable Telecommunications Association requesting that the Commission limit its decision on this issue to only the arbitration participants. 47 U.S.C. § 224 governs regulation of pole attachments and provides a method for states to assert jurisdiction over the rates, terms and conditions for pole attachments. The parties to this proceeding have requested that the Commission arbitrate rates for poles, ducts, conduit, and rights-of-way. We believe that the parties should compute the rates for poles, ducts, conduit and rights-of-way in accordance with 47 U.S.C. § 224(d)(1). The Commission's resolution of this issue should in no way be construed as the assertion of jurisdiction of this matter or the promulgation of rules and regulations for pole attachments under 47 U.S.C. § 224.

The Commission has also been requested to resolve the issues of non-recurring charges for unbundled network elements, rates for collocation, cross-connection, and the cost and cost-recovery

mechanism for interim number portability. These rates are set forth in the ordering paragraphs herein.

Having considered the evidence on these issues as presented by the parties herein, and in accordance with the Act and the applicable law, the Commission is of the opinion and orders that:

(1) The wholesale discounts GTE offers for services available for resale are 20.6% when GTE furnishes directory assistance and call completion services and 23.4% when GTE does not furnish those services. These rates are effective until the Commission replaces the discounts in a future proceeding.

(2) GTE shall provide its retail services on a wholesale basis consistent with conditions set forth herein.

(3) The rates for unbundled network elements and interconnection shall be the rates set out in Attachment A to this order. These rates shall remain in effect until they are replaced with permanent rates as set in the pricing proceeding which will be initiated in the near future. The rate for the unbundled loop shall be geographically deaveraged into three density zones utilizing the methodology proposed by the Staff. GTE is required to provide any necessary information in a timely manner to the Staff and the other parties to calculate the deaveraged unbundled loop rates.

(4) Carriers will be assessed the applicable GTE interstate or intrastate switched access charge elements of End Office Switching, Carrier Common Line ("CCL") and Interconnection Charge ("IC") when a carrier purchases GTE's unbundled local switching element.

(5) GTE shall provide any Commission-approved unbundled network element in any technically feasible manner for the provision of telecommunications service in accordance with § 251(c)(3) of the Act. The petitioners may combine such unbundled network elements to provide telecommunications services.

(6) The Commission adopts a bill-and-keep methodology for mutual traffic termination as agreed upon by all parties in this proceeding. A traffic imbalance threshold of plus or minus ten percent shall be used. The Commission determines that the rates for traffic imbalance to be utilized are those recommended by the Staff as identified in Attachment A.

(7) The rates for poles, ducts, conduits and rights-of-way shall be computed in accordance with 47 U.S.C. § 224(d)(1). The Commission does not, by this order, assert jurisdiction over these issues or promulgate rules and regulations for pole attachment under 47 U.S.C. § 224.

(8) Until the rates are replaced by the pricing proceeding, the non-recurring charges for unbundled network elements shall be as follows:

- (a) The non-recurring charge for the initial service order shall be \$20.71 per order as proposed by Staff.
- (b) The non-recurring charge for the subsequent service order change shall be \$6.97 per order as proposed by Staff.
- (c) The non-recurring charge for the transfer of service charge shall be \$7.02 per order. This rate was determined by utilizing the relationship of GTE's proposed initial order charge to its proposed transfer of service charge and applying that percentage to the Commission-approved rate in 7(a) herein.
- (d) The non-recurring charge for the customer service record research shall be \$5.25 per request as proposed by GTE.
- (e) The non-recurring charge for each unbundled loop shall be \$10.25 as proposed by GTE. The non-recurring charge for each unbundled port shall be \$10.25 as proposed by GTE. There will be no installation charge when the CLEC orders both the loop and switching elements together and GTE does not perform an installation function.
- (f) The loop facility charge shall be billed in 15 minute increments as proposed by the Staff. The rate for each 15 minute increment shall be \$7.68.

(9) Interim number portability for GTE shall be handled by the "track and true-up" method proposed by the Staff. Under this method, local exchange carriers track their quantity of ported

numbers and, once the Commission establishes a rate and cost recovery method, there will be a retroactive true-up with appropriate Commission determined interest charges. An industry task force that represents the telecommunications carriers in the state shall be established to seek agreement on a cost recovery mechanism for interim number portability in conformance with FCC requirements. The Commission Staff shall participate in this task force.

(10) The rates for collocation and the cross-connect shall be those rates as identified by Exhibit GTE-DT-21, Attachment 5, in the TELRIC column. These charges shall be in effect until replaced by permanent rates set in the pricing proceeding.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Wilma R. McCarey, AT&T Communications of Virginia, Inc., 3033 Chainbridge Road, Room 3-D, Oakton, Virginia 22185; Edward L. Petrini, Senior Assistant Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Paul Hlavac, 7 Ashbury Lane, Barrington, Illinois 60010; Roger Heflin, AT&T Communications of Virginia, Inc., 1001 East Broad Street, Suite 430, Richmond,

Virginia 23219; Alexander F. Skirpan, Esquire, and John D. Sharer, Esquire, Christian & Barton, L.L.P., 909 East Main Street, 1200 Mutual Building, Richmond, Virginia 23219-3095; Anne F. LaLena, MFS Intelenet of Virginia, Inc., 8100 Boone Boulevard, Suite 500, Vienna, Virginia 22182; Robin F. Cohn, Esquire, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007; Paul Kouroupas, Esquire, TCG, Two Teleport Drive, Staten Island, New York 10311; Tina Pidgeon, Esquire, Drinker, Biddle & Reath, 901 Fifteenth Street, N.W., Suite 900, Washington, D.C. 20005; Sarah Hopkins Finley, Esquire, Williams, Mullen, Christian & Dobbins, P.C., P.O. Box 1320, Richmond, Virginia 23210-1320; John Antonuk, 790 Pine Tree Road, Hummelstown, Pennsylvania 17036; Eric M. Page, Esquire, LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Tom Krafcik, Liberty Consulting Group, 77 Southfield Drive, Belle Mead, New Jersey 08502; Carl Huppert, 250 West Pratt Street, Suite 2201, Baltimore, Maryland 21201; John C. Dodge, Esquire, Jones Telecommunications, Inc., 1919 Pennsylvania Avenue, N.W., Washington, D.C. 20006-3548; Christopher D. Moore, Esquire, Sprint Communications Company, 1850 M Street, N. W.,

Suite 1110, Washington, D.C. 20036; William L. Hanchey, Virginia
Cable Television Association, 300 West Franklin Street, Richmond,
Virginia 23220; and Prince Jenkins, Esquire, MCI
Telecommunications Corp., 1133 19th Street, N.W., Washington,
D.C. 20036.

A True Copy
Teste:

William J. Bridge

Clerk of the
State Corporation Commission

Attachment A

<u>Element</u>	<u>Rate</u>
Average Local Loop	\$19.16 per line per month
Loop Distribution	\$13.36 per pair per month
Loop Concentrator	\$ 2.96 per line per month
Loop Feeder	\$ 2.84 per line per month
End Office Switching: Port	\$ 1.67 per line per month
End Office Switching: Usage	\$0.0029 per minute
Signaling Links	\$25.78 per link per month
Signaling Transfer Point	\$0.00018 per message
Signal Control Point	\$0.00109 per message
Common Transport	\$0.00090 per minute per leg
Dedicated Transport	\$ 3.76 per DS-0 equivalent per month
Tandem Switching	\$0.0019 per minute